

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX**

CHARTIERS TAXI, INC.<sup>1</sup>

Employer

and

**Case 6-RC-11744**

SERVICE PERSONNEL AND EMPLOYEES OF  
THE DAIRY INDUSTRY, TEAMSTERS LOCAL  
UNION NO. 205 A/W INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before David L. Shepley, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Acting Regional Director.<sup>2</sup>

Upon the entire record in this case,<sup>3</sup> the Acting Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by December 8, 1999.

<sup>3</sup> Neither party filed a brief in this matter.

The Employer disputes that it is engaged in commerce within the meaning of the Act. Contrary to the Employer's contention, I find that it is engaged in commerce within the meaning of the Act.

The Employer, a corporation with its sole office and place of business located in Canonsburg, Pennsylvania, is engaged in business as a provider of transportation services. These services include Access<sup>4</sup>, van and taxi services to the Allegheny Intermediate Unit, Canon-McMillan School District, Chartiers-Houston School District, Canonsburg Hospital and Washington County Transportation. Each of these customers is located in Pennsylvania. The Employer operates 33 vehicles, including 10 cars and 23 vans. The record reveals that more than 50 percent of the Employer's revenue was derived from providing paratransit service to residents of Washington County and the bulk of the Employer's remaining revenue was derived from services rendered to Canonsburg Hospital and to various school districts.

Based on the nature of its operations, I conclude that the appropriate jurisdictional standard to be applied to the Employer is the \$250,000 gross annual revenue discretionary jurisdictional standard applicable to paratransit and private transit operations. In addition to satisfying the \$250,000 discretionary jurisdictional amount, statutory jurisdiction must exist. ATC/Vancom of Nevada Limited Partnership d/b/a Reno Sparks Citilift, 326 NLRB No. 155 (1998); School Bus Services, Inc., 312 NLRB 1 (1993). In determining whether the appropriate discretionary monetary standard has been met the Board may examine commerce data derived from the most recent complete calendar year or the most recent complete fiscal year. Thus, in this case, it is appropriate to consider the Employer's earnings for the year 1998, which, in addition to being the last complete calendar year prior to the hearing in this matter, was also the Employer's last complete fiscal year. See Aroostook Federation of Farmers, Inc., 114 NLRB 538, 539 (1955).

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<sup>4</sup> The record indicates that "Access" transportation is a form of "paratransit" transportation in which the Employer provides pre-registered and pre-priced trips to residents of Washington County, Pennsylvania, who are elderly, on medical assistance or participating in a Welfare to Work program.

The record reveals that in its last complete fiscal year, which coincides with calendar year 1998, the Employer earned between \$593,265 and \$703,143 in gross revenues. During 1998, the Employer derived approximately \$350,000 in revenue from Washington County Transportation for providing paratransit transportation services, and derived over \$55,000 in revenue from Canonsburg Hospital for providing taxi service for various hospital needs. During that same time period it provided school van services to a number of school districts. In providing these services it derived \$154,265 in revenue from the Canon-McMillan School District; \$92,169 in revenue from the Allegheny Intermediate Unit; and \$53,000 in revenue from the Chartiers-Houston School District. Testimony elicited during the hearing revealed that Canonsburg Hospital, Canon-McMillan, Allegheny Intermediate Unit and Chartiers-Houston School Districts are each directly engaged in commerce. No testimony was provided regarding Washington County Transportation. While the school districts are themselves exempt from the Board's jurisdiction under Section 2(2) of the Act, their operations are of a sufficient magnitude that jurisdiction over the Employer may be predicated upon the services it provides to those users. Siemons Mailing Service, 122 NLRB 81, 85 fn. 12 (1958).

Based on the above, it is clear that the Employer derived gross revenues in excess of \$250,000 during the appropriate period, and thus meets the discretionary jurisdictional standard applicable to its operations. Moreover, even if the standard established for taxicab operations was viewed as applicable to the Employer, since the Employer does provide some taxi services, the Board would still assert jurisdiction inasmuch as the Employer had gross revenues during the appropriate period in excess of \$500,000.<sup>5</sup>

Having satisfied the discretionary jurisdictional standard, statutory jurisdiction must be established. The record reveals, through the testimony of its president, Mary Ann Mucha, that on an annual basis the Employer purchased \$26,000 in paratransit insurance from National Casualty Insurance, an insurance company domiciled in either Arizona, Michigan or in both

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<sup>5</sup> Carolina Supplies & Cement Co., 122 NLRB 88, 89 fn. 5 (1958).

states. The record further reveals that the Employer purchased between \$11,000 and \$15,000 in taxicab insurance annually from American Country Insurance, an insurance company domiciled in Illinois. The Employer relies upon this insurance in order to operate the vehicles utilized in providing the services discussed herein.<sup>6</sup> Accordingly, whether the purchase is characterized as inflow or outflow, I find that statutory jurisdiction has been established through the substantial purchase of insurance across state lines. Oregon Teamsters' Security Plan Office, 119 NLRB 207 (1957). Moreover, statutory jurisdiction may also be established through satisfactory evidence of indirect inflow or outflow. Somerset Manor, Inc., 170 NLRB 1647 (1968); Dominick's Finer Foods, Inc., 156 NLRB 14, 15 (1965), enforcement denied on other grounds, 367 F.2d 781 (7<sup>th</sup> Cir. 1966). The volume of business that the Employer does with the hospital and the school districts referenced above, which exceeded \$50,000 for each of these entities in 1998, clearly establishes that the standard has been met. Accordingly, it is appropriate to assert jurisdiction over the Employer.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

As amended at the hearing, the Petitioner seeks to represent a unit composed of all full-time and regular part-time school drivers, taxi drivers, Access, van and lift drivers, aides, mechanics, head mechanics and dispatchers employed by the Employer at its Canonsburg, Pennsylvania facility; excluding office clerical employees, administrative employees, and guards, professional employees and supervisors as defined in the Act. The parties are substantially in accord as to the scope and composition of the unit. The only issues involving

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<sup>6</sup> The record indicates that the purchase of paratransit insurance is financed through Transamerica. However, it is unclear whether the taxicab insurance is similarly financed. Whether or not the purchase of insurance is financed does not change the nature of the transaction, i.e. the purchase of insurance by the Employer directly from an entity outside Pennsylvania.

unit placement are whether the sole shareholder of the Employer, Mary Ann Mucha, and her son, Robert Mucha, who works as a part-time dispatcher, should be included in the unit. There are approximately 26 employees in the petitioned-for unit. There is no history of collective bargaining for any of the employees involved herein.

The Employer contends, contrary to the Petitioner, that Mary Ann Mucha and her son, Robert Mucha, should be included in the bargaining unit. Mary Ann Mucha testified that she is the President, sole owner, sole shareholder and sole supervisor of the Employer. Even though she also performs some work as a driver for the Employer, as sole owner and shareholder of the company, she is the "employer" within the meaning of Section 2(2) of the Act and therefore is not eligible for inclusion in the bargaining unit. Ideal Elevator Corp., 295 NLRB 347, 348 (1989). See also Science Applications International Corporation, 309 NLRB 373 (1992). I shall, therefore, exclude her from the unit found appropriate herein.

Moreover, even if Mary Ann Mucha was not the sole owner and shareholder, she would still be excluded from the unit as a supervisor. In this regard, Mary Ann Mucha testified that she is the sole supervisor, and is the only company official with the power to hire and fire. It is well settled that the possession of any of the indicia of supervisory authority specified in Section 2(11) of the Act is sufficient to confer supervisory status on an individual. See Science Applications International Corporation, supra. As the ability to hire and fire are among the indicia of supervisory status contained in Section 2(11) of the Act, I shall, therefore, on this additional basis, exclude her from the unit found appropriate herein.

Robert Mucha, who is employed as a part time dispatcher, is the son of Mary Ann Mucha, the sole owner and shareholder of the company. In the corporate context the Board finds that the sole shareholder of a closely held corporation is equivalent to the owner of a company, and that the child of someone with more than a 50 percent ownership interest is excluded from the bargaining unit under Section 2(3) of the Act as an individual employed by their parent. As Robert Mucha is an individual employed by his parent, he is not an "employee" within the meaning of Section 2(3) of the Act. Accordingly, he is not eligible for inclusion in the

bargaining unit, and I shall, therefore, exclude him from the unit found appropriate herein.

NLRB v. Action Automotive Inc., 469 U.S. 490, 497 fn. 7 (1985); Ideal Elevator Corp., supra; Bridgeton Transit, 123 NLRB 1196, 1197 (1959).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time school drivers, taxi drivers, Access drivers, van drivers, lift drivers, aides, mechanics, head mechanics and dispatchers employed by the Employer at and out of its Canonsburg, Pennsylvania, facility; excluding office clerical employees, administrative employees and guards, professional employees and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**

An election by secret ballot will be conducted by the Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>7</sup> Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date,

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<sup>7</sup> Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>8</sup> Those eligible shall vote whether or not they desire to be represented for collective bargaining by Service Personnel and Employees of the Dairy Industry, Teamsters Local Union No. 205 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 24th day of November 1999.

/s/ Michael C. Joyce

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Michael C. Joyce  
Acting Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

177-2484-3700  
280-4110  
280-4120  
362-6798  
460-7550-7500  
460-7550-8700

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<sup>8</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before December 1, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.